IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5113 of 2007

For Approval and Signature:
HONOURABLE **MS. JUSTICE R.M.DOSHIT**
&
HONOURABLE **MR.JUSTICE C.K.BUCH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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NIRUBEN WD/O. MAHENDRA THAKORBHAI PATEL & 4 - Appellant(s)
Versus
JASWANTBHAI ANOPBHAI RATHOD & 2 - Defendant(s)

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Appearance :
MR KASHYAP R JOSHI for Appellants
MR DC DAVE for Defendant(s) : 1 - 2.
MR VIBHUTI NANAVATI for Mr PV NANAVATI for Defendant No.3.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

and

HONOURABLE MR.JUSTICE C.K.BUCH
26th December, 2007

ORAL JUDGMENT *(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)*

This Appeal preferred under Section 173 of the Motor Vehicles Act, 1988 arises from the judgment and

award dated 31st January, 2007 passed by the Motor Accident Claims Tribunal, Bharuch in Motor Accident Claim Petition No. 756/1999. The appellants before this Court are the claimants.

The claimants are the widow, the children and the parents of the deceased Mahendrakumar Thakorbhai Patel. The Tribunal below has recorded the finding that at the time of his accidental death, the said Mahendrakumar Thakorbhai Patel was 38 years of age; was an agriculturist cultivating the family lands. His monthly income is estimated at Rs.6000/=, out of that after deducting one third for his maintenance and personal expenses, the dependency loss is valued at Rs. 4000/= per month. Considering the age of the deceased, fifteen years' multiplier is adopted. Thus, a sum of Rs. 7,20,000/= has been awarded to the claimants towards loss of dependency. To that is added conventional amount in the sum of Rs. 25,000/=. *Thus*, a total sum of Rs. 7,45,000/= is awarded with interest @ 9% *per annum* and proportionate cost. Feeling aggrieved, the claimants have preferred the present Appeal.

Mr. Joshi has appeared for the appellants-claimants. He has submitted that the compensation

awarded by the Tribunal below is not adequate. The claimants ought to have been awarded compensation in the sum of Rs. 12,50,000/= as claimed in the claim petition. Mr. Joshi has submitted that though the Tribunal has estimated the monthly income of the said Mahendrakumar at Rs.6000/=, the Tribunal has erred in deducting a sum of Rs. 2000/= towards personal expenses and maintenance of the said Mahendrakumar. In other words, the Tribunal has erred in adopting a sum of Rs. 2000/= for personal maintenance and expenses of the said Mahendrakumar Patel.

We are unable to agree with Mr. Joshi. Even as an agriculturist, the said Mahendrakumar would need maintenance and personal expenditure. Mr. Joshi has also submitted that the future increase in the income of the said Mahendrakumar has not been considered. This contention also does not appeal to us. It is not in dispute that the deceased was an agriculturist and was cultivating the family lands. In absence of any other business or profession, the capacity to do manual labour would decrease with the advancement of age. The contention that with the passing of the years earning capacity of the deceased would have increased is misconceived and is required to be

rejected outright.

No other contention is raised before us. The Appeal is dismissed *in limine*. Notice is *discharged.*

Sd/= Sd/=
{C.K Buch, J.} {Ms. R.M Doshit, J.}

*Prakash**